

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Add Section 126; Amend Section 180.2
Title 14, California Code of Regulations
Re: Commercial Tanner Crab Fishery Provisions

- I. Date of Initial Statement of Reasons: September 16, 2005
- II. Date of Pre-adoption Statement of Reasons: October 7, 2005
- III. Date of Final Statement of Reasons: January 3, 2006
- IV. Dates and Locations of Scheduled Hearings:
- (a) Notice Hearing: Date: February 4, 2005
Location: San Diego, CA
- (b) Discussion/Adoption Hearing: Date: December 9, 2005
Location: Concord, CA
- V. Update:
- No modifications were made to the originally proposed language of the Initial Statement of Reasons.
- The Commission adopted the proposed regulatory additions and amendments at the December 9th adoption hearing.
- VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:
- Responses to comments from a letter dated August 15, 2005, submitted by Mr. Russell Moore of Norton Sound Ventures, were included in the Pre-adoption Statement of Reasons (attached). No other public comments, written or oral, were received during the public comment period.
- VII. Location and Index of Rulemaking File:
- A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department Files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:
No alternatives were identified.

(b) No Change Alternative:

The no-change alternative would mean that commercial harvest of Tanner crab using trap gear would continue to be prohibited. Coupled with the success of the experimental fishery, scientific information suggests that the resource is capable of sustaining some level of commercial harvest. Furthermore, statutory directives encourage development of emerging fisheries in these situations. The status quo alternative would mean the unfounded loss of economic opportunity to the state to develop a fishery that may prove viable for fishermen, fish processors, and fish buyers.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete With Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed 2005-06 regulations would benefit California's commercial fishermen and may benefit several North Coast crab processing plants, all of which are small businesses as defined under Government Code Section

11342.610. Under the proposed regulations, a directed Tanner crab fishery would be open to any California commercial fishermen on payment of the specified fees. Information from an experimental Tanner crab fishery in 2003 and in 2004 was collected to investigate this potentially new revenue producing resource in California. Between February and July 2004, landings in the experimental fishery were approximately 460,964 pounds of Tanner crab, with a reported ex-vessel value of \$559,612. The Tanner crab (*Chionoecetes tanneri*) are often grouped along with *C. opilio* and *C. bairdi*, and marketed as snow crab, Tanner crab, queen crab, or spider crab. This market group has enjoyed very high market demand both domestically and globally. In year 2000, a drastic decline in the principal supply of domestic snow crab, from Alaska, resulted in imports accounting for more and more of the total U.S. supply of snow crab. (MBA 2004). By the end of year 2001, the U.S. landed approximately 26,843,453 pounds of snow and Tanner crab (12,176 metric tons), whereas imports totaled approximately 100,321,233 pounds (45,505 metric tons). Thus U.S. domestic production accounted for only about 21percent of the U.S. market supply of snow crab; the remainder being imported from Canada (63 percent), Greenland (7 percent), and Russia (5 percent), with minor contributions from Japan and other nations. (NMFS 2004). Based on a proposed allowable harvest of two million pounds during a twelve month fishing season, projected ex-vessel revenues for this new California Tanner crab fishery could be as high as \$2,460,000 (2,000,000 pounds x \$1.23, average price per pound for 1995 through 2004, equals \$2,460,000). The California counties that would most likely benefit from this new revenue source are Humboldt and Del Norte counties, assuming that the crab are landed and processed in California. Based on local economic multipliers for these respective counties, projected annual ex-vessel revenues of \$2,460,000 could mean increases of \$2,918,298 to \$3,680,652 in economic activity for Del Norte County and Humboldt County, respectively. (This is derived by multiplying the projected ex-vessel revenues \$2,460,000 by the respective county economic output multipliers of 1.1863 for Del Norte County and 1.4962 for Humboldt County; e.g. Del Norte County multiplier of 1.1863 x \$2,460,000 equals \$2,918,298). (RIMS 2000).

MBA 2004. Monterey Bay Aquarium, Seafood Watch Seafood Report, Snow Crab – *chionoecetes* spp., Final Report, February, 2004. Available online at http://www.mbayaq.org/cr/cr_seafoodwatch/content/media/MBA_SeafoodWatch_SnowCrabReport.pdf

NMFS Statistics, 2002. Landings, import and export sources. Available online at www.st.nmfs.gov/webppls/. *As presented in Monterey Bay Aquarium, Seafood Watch Seafood Report, Snow Crab – *chionoecetes* spp., Final Report, February, 2004.

RIMS 2000. RIMS II Multipliers (based on year 2000 national annual input-output data and 2000 regional data), Bureau of Economic Analysis, US Department of Commerce. <http://www.bea.doc.gov/bea/regional/rims/>.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

With a proposed 2,000,000 pound annual harvest allowance, and favorable market demand for Tanner crab, this new fishery could represent 11.6 to 19.4 new full-time job equivalents based on employment multipliers for Del Norte and Humboldt counties, respectively. (RIMS 2000).

- (c) Cost Impacts on a Representative Private Person or Business:

Commercial fishermen who elect to purchase a Tanner crab fishery permit would have to pay an annual fee of \$10,000. In addition, they are required to privately arrange for on-board observers to monitor Tanner crab fishing activities, at the fishermen's expense. Costs for observers are expected to be significant, depending on the number of days spent Tanner crab fishing. Each participating vessel is expected to require, on average, about 35 days of Tanner crab onboard observer coverage each season (beginning with the first day of fishing and for all fishing activities during the immediately following 60 days). Since daily observer costs run \$300 to \$350 per day per observer, total observer costs are projected to be about \$10,500 to \$12,250 per vessel each season. Permittees may also have to purchase new Tanner crab traps or adapt existing traps to the proposed specifications. Information from commercial crab trap manufacturers indicates that new traps will cost about \$750 to \$850 each. Under the proposed regulations, each permitted vessel may fish a maximum of 480 traps. Thus a maximum compliment of new traps could cost the Tanner crab fishermen \$360,000 to \$408,000 initially.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs Mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None

Updated Informative Digest/Policy Statement Overview

Fish and Game Code Section 9000 prohibits commercial harvest of any finfish, mollusk or crustacean using trap gear unless expressly authorized by statute. Other statutes in Article 1 of Chapter 4 of the Fish and Game Code specify trap gear requirements for each directed commercial fishery in the state. Section 9011, which defines crab trap requirements, only provides specifications for traps that are used for purposes of taking Dungeness and rock crabs. Trap gear for other types of crabs is not provided for.

The proposed regulations would provide for the development of a small to moderate-scale commercial Tanner crab trap fishery in deep water off the coast of California that would be adopted under the authority granted to the Commission to manage and regulate emerging fisheries in Section 7090 of the Fish and Game Code.

Based on the success of the experimental Tanner crab (*Chionoecetes tanneri*) trap fishery in 2003 and 2004, the Department has determined that the Tanner crab fishery resource off California satisfies the statutory requirements of an emerging fishery. The Commission granted the experimental gear permits to explore the feasibility of commercial harvest under authority of Fish and Game Code Section 8606, which provides that “the Commission shall encourage the development of new types of commercial fishing gear and new methods of using existing commercial fishing gear.” The experimental fishery landed 212,000 pounds of live Tanner crab in 2003 and 461,000 pounds in 2004 around Cape Mendocino. The fishery operated primarily along the 500-fathom depth contour, and between eight and 35 miles from shore.

The target of major Alaska fisheries, Tanner crabs include several species of crab of the genus *Chionoecetes*, including the species commonly known as “snow crab,” and are highly valued for human consumption. The proposal considers impacts to the Tanner crab resource, as well as the offshore environment and its other users.

The proposed regulations would implement the following program components:

- 1. Tanner Crab Trap Vessel Permit Requirement.** The proposed regulations would establish a new commercial fishing permit that would allow for the directed commercial harvest of Tanner crab using trap gear. To purchase a permit for placement on a vessel, the applicant must have a commercial boat registration, hold a valid commercial fishing license, and submit an application and the permit fee. When the vessel is operating under authority of the permit, any person who operates or assists on the vessel must hold a commercial fishing license and a General Trap Permit.

- 2. Permit Fee.** The proposed permit fee for a Tanner Crab Trap Vessel Permit is \$10,000. The revenue generated from the fee will be used to offset costs already incurred by Department biological, enforcement and licensing staff for development of the proposed program. In the future, permit revenue will partially fund oversight of the fishery observer program, enforcement, review of biological and fishery data, oversight of ongoing fishery monitoring programs such as logbooks and observers, dockside sampling, site visits, and other biological review and data analysis that will be required on an as-needed basis.
- 3. Prohibit Incidental Take in Existing Trap Fisheries.** Existing trap fisheries that incidentally take Tanner crabs must immediately release Tanner crab under the proposed regulations unless the vessel holds a Tanner Crab Trap Vessel Permit.
- 4. Seasonal Catch Limit of Two Million Pounds.** The proposed regulations would limit the commercial harvest to two million pounds of Tanner crab into California ports each season (April through March of the following year). The proposed limit is based on the current 40 million-pound biomass estimate for Tanner crab off California, and from considering impacts of Tanner crab taken as bycatch in groundfish trawl fisheries, discard mortality of crab taken in the new directed fishery, and the potential for conflict with other fisheries operating in the same waters. The Department will track catches against the harvest limit and shall give not less than 10 days notice of the fishery closure to permittees via a notification letter, and to the public and the Commission via a news release.
- 5. Proposed Trap Construction Requirements, Specifications, and Limits.** The proposed regulations specify the following:
 - (A) General State Trapping Requirements.** Tanner crab traps and fishing activities would be subject to statutes and regulations that apply generally to all commercial trap fishing activity. These include trap logbook and submission requirements, preventing the disturbing of traps of other individuals, trap servicing intervals not to exceed 96 hours, and trap marker buoy and identification requirements.
 - (B) Trap Construction and Dimensional Requirements.** Every Tanner crab trap shall have three escape ports of at least 4.5 inches minimum inside diameter, installed as described in the proposed regulations. Tanner crab traps must not be more than 10 feet long and not more than 10 feet wide and not more than 42 inches high.
 - (C) Destruction Devices.** Tanner crab traps must have an opening in any sidewall or on the top of the trap of at least 11 inches taken at its smallest inside diameter. The escape opening must be closed with an authorized destruct device attachment material.

(D) Prohibition on Pop-Ups. Timed buoy release mechanisms capable of submerging a buoy attached to a trap, commonly known as “pop-ups,” shall not be used on buoy lines attached to Tanner crab traps, and shall not be possessed by any commercial vessel while taking, attempting to take, or possessing Tanner crabs.

(E) 300-Fathom Minimum Depth Requirement for Trapping. Tanner crab traps may only be used in water depths greater than 300 fathoms.

(F) Vessel Buoy Marking Requirement. In addition to other marking and buoy requirements, every string of Tanner crab traps shall be marked with a buoy on each end of the string that is marked with the vessel's commercial boat registration number, and preceded by the letters “TC,” as specified in the proposed regulations.

(G) Disturbing Traps Prohibited. Operators or crew aboard permitted vessels may not disturb, move or damage any Tanner crab trap that belongs to another owner, unless the individual has written permission in his or her immediate possession from the permittee whose vessel registration number is marked on the buoy.

(H) Trap and String Limits. No more than 480 traps may be used per permitted vessel, and not more than six strings with not more than 80 traps per string shall be used. All traps must be fished on a string of traps.

- 6. Processing at Sea.** Based on interest expressed by prospective Tanner crab fishery participants, the proposed regulations would allow vessels to process crabs at sea and land them in a condition other than whole, similar to other fisheries including salmon, swordfish, sablefish and some sharks. The proposed regulations would impose additional reporting requirements on fishermen who process at sea, so that landings of processed crab can clearly be distinguished. Processed crab shall be converted to the whole-weight equivalent for quota and trip limit tracking purposes, and for fish landing tax purposes.
- 7. Cumulative Vessel Trip Limits.** The proposed regulations would limit the amount of Tanner crab that may be taken or landed per vessel to 250,000 pounds per two-month period. All landings made by the vessel count toward the cumulative trip limit for the two-month period that corresponds to the date on the receipt. Copies of all landing receipts which document the catch of Tanner crab shall be kept onboard the fishing vessel throughout, and for 15 days following, each of the two-month periods.
- 8. Incidental Landings and Allowances.** The proposed regulations would allow incidental take of up to five percent by weight for invertebrates other than Tanner crab, except for crabs of the genus *Cancer*, which may not be retained or landed. All finfish taken in Tanner crab traps must be released, with the exception of

sablefish, which may be retained if authorized by federal groundfish regulations. No invertebrates or finfish taken in Tanner crab traps may be used as bait.

9. Observer Requirements and Cooperation with Observer Programs.

Because this is a new commercial fishery that has yet to demonstrate a history of sustainable catches, on-board observation of the new fishery is needed to evaluate the fishery and its impacts. The proposed regulations would require that every permitted vessel carry an onboard observer beginning the day that fishing commences and during all fishing operations that occur over the sixty consecutive days that follow. The cost for the observer would be paid directly by the permittee. The regulations would allow the permit holder the option of contracting with a private data collection company for the service of providing an observer, or recruiting and hiring an observer certified by the National Marine Fisheries Service or by the Alaska Department of Fish and Game who meets the Department's approval. The permittee must seek approval of the selected observer or private data collection firm from the Department at least 60 days prior to the planned beginning of fishing activity as specified in the proposed regulations. The permittee would be responsible for ensuring that the observer follows the data collection protocol and that the data is delivered to the Department at the times and in the manner specified in the proposed regulations. The permittee would also be required to cooperate with any Department observer or other observer program, and as specified in existing regulations of Section 105.5, Title 14, CCR.

10. Minimum Size Limit. The proposed regulations specify that any species of Tanner crab taken commercially must have a minimum carapace width of five inches. Every person taking Tanner crabs shall carry a measuring device and any Tanner crab that is found to be undersized shall immediately be returned to the water.

11. Male-Only Fishery. The proposed regulations would allow only male Tanner crabs to be retained and landed. All female Tanner crabs must immediately be returned to the water.

12. Prohibition on Use as Bait. The proposed regulations specify that Tanner crabs may not be used as bait in any commercial fishery.

13. Tidal Invertebrate Permits. The proposed regulations specify that Tidal Invertebrate Permits issued pursuant to Section 123, Title 14, CCR, are not required for the commercial take of Tanner crab.

14. Permit Revocation and Violations. The proposed regulations specify that a Tanner Crab Trap Vessel Permit shall be revoked if the applicant or permittee submits false information for the purposes of obtaining a permit. Any Tanner Crab Trap Vessel Permit may be suspended, revoked or cancelled by the Commission for violations. The Tanner Crab Trap Vessel Permit holder shall be

liable for any violations of the proposed regulations committed by him or her, as well as violations committed by any other person operating under the authority of his or her permit. Any other person violating the proposed regulations would be liable for his or her own violations as well.

The Commission adopted the regulatory additions and amendments as proposed at the December 9th adoption hearing.

Addendum to Final Statement of Reasons

The following non-substantive changes have been made to the regulatory language:

- Subsection 126(a)(1)(A) was revised to correct the numbering format.
- Subsection 126(a)(1)(A)3. was revised to correct the permit application form number from DFG 1439 (9/05) to FG 1439 (9/05).
- Subsection 126(a)(8)(A)2. was revised to clarify the Department's data collection protocol discussed in the Initial Statement of Reasons.
- The reference citations for Section 126 were revised as follows:
 - Specific applicable code sections within 7050 et seq. were enumerated.
 - Section 9012 was deleted from the reference citations.
- Section 8834 is included as a reference citation because allows incidental take of up to 500 pounds of tanner crab by trawl or drag net. It also prohibits a tanner crab trap permittee from possessing in excess of 500 pounds of tanner crab while operating or carrying any type of trawl or drag net.
- Section 9012 was removed from the list of Fish and Game Code sections on page two of the application form, FG 1439, because this section was removed from the reference citation for Section 126.

Clarification of Documents Relied Upon

MBA 2004. Monterey Bay Aquarium, Seafood Watch Seafood Report, Snow Crab – chionoecetes spp., Final Report, February, 2004, listed on page 31 of the Initial Statement of Reasons for regulatory action was relied upon as a document supporting the regulatory change. This document was available at the website listed in the Initial Statement of Reasons throughout the notice period. The document is being provided in electronic format in the rulemaking record.

NMFS Statistics, 2002. Landings, import and export sources, listed on page 31 of the Initial Statement of Reasons for Regulatory Action is a document used as referenced in the above-mentioned Monterey Bay Aquarium, Seafood Watch Seafood Report and therefore a copy is not included in the rulemaking record.

RIMS 2000. RIMS II Multipliers (based on year 2000 national annual input-output data and 2000 regional data), Bureau of Economic Analysis, US Department of Commerce, listed on page 31 of the Initial Statement of Reasons for Regulatory Action is a software program of the regional multipliers used to project the economic impacts to locales.

Incorporation by Reference Pursuant to Section 20, Title 1

The Commission has incorporated application form (FG 1439) of this rulemaking by reference because it would be impractical to publish the form in the California Code of Regulations due to the length of the form and the fact that the form is revised annually and is of limited use. FG 1439 was available upon request from the Fish and Game Commission office from October 21, 2005 through December 9, 2005.